

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE NM
AUG - 5 1999

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH MYRICK,

Defendant.

ROBERT M. MARCH
CLERK

No. CIV-99-0728 MV/DJS
CR-95-487 MV

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant's motion to correct sentence under 18 U.S.C. § 3742(a)(2) and Fed.R.Crim.P. 52(b) filed June 28, 1999, and treated administratively as a motion under 28 U.S.C. § 2255. The motion asserts that the Court should reduce Defendant's offense level (and likewise, presumably, his term of imprisonment) under the "safety valve" provision in United States Sentencing Guidelines § 5C1.2. For the reasons below, the motion will be denied.

First, neither § 3742(a)(2) nor Rule 52(b) authorizes the relief sought. This Court "does not have inherent authority to modify a previously imposed sentence; it may do so only pursuant to statutory authorization," *United States v. Mendoza*, 118 F.3d 707, 709 (10th Cir.) (citing *United States v. Blackwell*, 81 F.3d 945, 947-48, 949 (10th Cir.1996)), *cert. denied*, --- U.S. ---, 118 S.Ct. 393 (1997). No provisions for modifying a sentence are contained in Rule 52(b), and the terms of § 3742(a)(2) apply only to appeals.


Second, the "safety valve" provision was added to 8 U.S.C. § 3553 and Guidelines § 5C1.2 "to permit courts to sentence less culpable defendants to sentences under the guidelines, instead of imposing mandatory minimum sentences." *United States v. Torres*, 99 F.3d 360-62 (10th Cir. 1996). Under certain circumstances, this provision "authorizes a judge to ignore the statutory minimum."

3

United States v. Belt, 89 F.3d 710 (10th Cir. 1996). As clearly stated in the judgment, Defendant was sentenced under the Guidelines, and thus the “safety valve” did not apply.

And finally, even assuming Defendant’s offense level should have been reduced from 29 to 27 at sentencing, the term of imprisonment imposed was within the range now sought in Defendant’s motion. See U.S.S.G. Ch. 5 Part A, Sentencing Table, *1995 Manual*. Defendant’s offense level will not be reduced, and the motion will be denied.

IT IS THEREFORE ORDERED that Defendant’s motion to correct sentence filed June 28, 1999, is DENIED.


UNITED STATES DISTRICT JUDGE